



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-93-8

FACTS:

You represent ABC Inc. ABC Inc. is a private non-profit corporation devoted to fostering and advancing the interests of certain wholesale distribution companies. ABC Inc. retains a lobbyist to monitor legislation of concern to its members.

ABC Inc. intends to host a sporting event at a resort on Cape Cod. The event will include a barbecue lunch, sports activities, a cocktail hour, a clambake dinner, and a post-dinner raffle to benefit a local charity. Attendance at the event will be by invitation only and invitees will include members of the legislature, their staffs and spouses, ABC Inc. members, suppliers, sports figures and other celebrities.

ABC Inc. intends to pay for the event by soliciting donations from its wholesale suppliers. Prior events have cost approximately \$150 per person. ABC Inc. hopes to ask corporate sponsors to increase the amount of their contributions over the amount that they have previously contributed in order to expand the raffle to benefit the charity and to increase their donation. Additionally, ABC Inc. plans to charge invitees an entrance fee correlated to the actual expenses of the event. ABC Inc. will request that the entrance fee check be made payable to the charity. ABC Inc. also expects that attendees will purchase raffle tickets which will also benefit the charity.

QUESTIONS:

1. Under G.L. c. 268A may an organization provide legislators with an all- expense-paid day at a resort if the legislators pay a charitable contribution as an entrance fee?

2. Under G.L. c. 268A may manufacturers and suppliers contribute funding to a trade organization which is organizing an event to which legislators will be invited?

ANSWERS:

1. The proposed arrangement by ABC Inc. will violate G.L. c. 268A, §3 because ABC Inc. will be providing benefits of substantial value to legislators to promote good will. The entrance fee does not alleviate the §3 problem where the fee is not earmarked towards and does not cover the expenses of the event.

2. The manufacturers and suppliers' donations will violate §3, if each manufacturer, at the time of its donation decision, knows that legislators or other public officials will be attending the event, if the manufacturer/supplier has an interest in legislative business and if its contribution amounts to \$50.00 per invited guest or greater.

DISCUSSION:

G.L. c. 268A, §3(a) prohibits, other than as provided by law for the proper discharge of official duties, directly or indirectly, giving anything of substantial value to any state employee for or because of any official act performed or to be performed by such employee. Section 3(b) places similar restrictions concerning the receipt of items of substantial value by state employees.

The Commission has interpreted "substantial value" to be \$50 or more, and will aggregate the amount of

gifts which originate from several individuals with common interests or which are given by a donor on a repeated basis. *See e.g., EC-COI-92-2; Public Enforcement Letter 89-1*, 1988 SEC 356. The Commission has also attributed to a legislator gifts to the legislator's spouse or guest. *See EC-COI-89-4; Commission Advisory No. 2* (Guidelines For Legislators Accepting Expenses and Fees for Speaking Engagements). In determining substantial value the Commission has, among other things, looked to the face value of tickets, the cost to the donor, and the actual benefit and worth to the employee. *See EC-COI-92-32; 92-19; 91-13*.

The principal question raised by your request is whether the "substantial value" requirement is met for purposes of §3, or, rather, whether a charitable contribution will offset any value received by a public employee participating in the event. Since none of the charitable contributions collected at the event will offset the expenses of the event, we conclude that the legislators will receive the full value of the entertainment and that ABC Inc. will be giving a gratuity of substantial value, based on the estimated costs. The legislators will also benefit from the ability to take a charitable tax deduction for the event. We note that, at many charitable events, the ticket price covers the expenses of the event as well as a charitable contribution. *See EC-COI-92-32* (ticket of \$150 included \$45 cost of food and drinks and \$105 contribution to the non-profit organization). Our conclusion would be different if the ticket price were used to defray the costs of the event.

Further, we do not find that the facts which you present are analogous to our limited precedent concerning charitable contributions under §3. In two prior opinions, we have advised public employees who have been offered compensation in appreciation for services rendered that §3 will not be violated if the compensation is donated to a charity or used to create a charitable trust from which the public employee will not benefit in any way. Also, the public employees were not permitted to take a tax deduction for the contribution. *EC-COI-87-23; 83-75*. Our reasoning in these cases was based on the fact that the public official received nothing of personal benefit for himself. Here, in comparison, although the legislators will make a charitable contribution, they will also receive a full day at a resort and a tax deduction.

We also conclude that the nexus requirement is met for purposes of §3. We do not find that the charitable fundraising is the sole motive for the gift, but rather that other motives include engendering good will with legislators who must act on numerous matters of interest to the industry. *See, e.g., In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609; *In re State Street Bank*, 1992 SEC 582; *In re Stone and Webster*, 1991 SEC 522; *In re Ackerley Communications*, 1991 SEC 518, 520 n.5. For purposes of this opinion we presume that ABC Inc. will have the requisite interest^U in legislative business.

We note that the raffle held to benefit the charity will not violate §3. A raffle prize awarded in a random drawing is generally not given for or because of an official's duties. *EC-COI-82-161; 83-39*.

Finally, you have asked us to comment upon the application of the conflict law to the suppliers and manufacturers who will donate the funds for the event. We consider these organizations to be co-donors with ABC Inc. for §3 purposes. *See EC-COI-83-15* (in considering whether receipt of honoraria permissible, Commission will examine whether the sponsor of the event or the source of the honoraria is a person or official with whom employee reasonably expected to have official dealings); *80-28*. If the manufacturers, as the source of the funding, know, at the time of their donation, that legislators are invited to the event which they are funding and if the manufacturers have the requisite interest in legislative business, then we conclude that the nexus requirement is met for purposes of §3. In these circumstances the presumption is that the motive for giving is to engender good will with legislators who must act on matters of interest to the industry. *See, e.g., In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609; *In re Stone and Webster*, 1991 SEC 522; *In re Ackerley Communications*, 1991 SEC 518, 520. Under §3 it is not necessary for the manufacturers to give a gratuity directly to a legislator. Section 3 expressly prohibits the direct and indirect giving of a gratuity to a public official. We reiterate that

for §3 purposes it is unnecessary to prove that any gratuities given were generated by some specific identifiable act performed or to be performed. In other words no specific quid pro quo or corrupt intent need be shown. Rather, the gift may simply be an attempt to foster goodwill. It is sufficient that a public official, who was in a position to use his authority in a manner which could affect the gift giver, received a gratuity to which he was not legally entitled, regardless of whether or not that public official ever actually exercised his authority in a manner that benefitted the gift giver. *In re Stone and Webster Engineering Corporation*, 1991 SEC 522, 523, n.1.

Under these circumstances, §3 places a responsibility upon each manufacturer and supplier to limit its contributions to less than \$50 per invited guest if it is known that the funds will be used (at least in part) to benefit legislators, and if it has an interest in legislative business. When making a contribution decision each supplier may need to ascertain the estimated costs of the event and the number of guests invited (including the number of public employees). Alternatively, each manufacturer may require that ABC Inc. limit the benefits provided to the legislators at the event so that its contribution does not exceed the substantial value requirement. Similarly, each manufacturer may limit its contribution by requiring that the invited guests pay ABC Inc. for the benefits they receive.^{2/}

Date Authorized: February 23, 1993

^{1/}The test used by the Commission to determine an “interest in legislative business” is “whether the giver has any interest (other than the general one shared with other citizens) in any past, present, or future legislative act, including a bill, an appropriation, or a constituent service; thus, motives for giving include expressing gratitude for past acts or engendering future goodwill.” *EC-COI-92-2*.

^{2/}We note that issues may arise concerning whether certain manufacturers’ contributions should be aggregated for §3 purposes, if some of the manufacturers shared a common interest in legislative business and are aware that each is making a contribution to the event. *See EC-COI-92-2* (discussing aggregation as to recipient’s violation of §3[b]). However, this question is not before us and thus need not be addressed at this time.